

Rel: April 9, 2021

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

1190984

**Ex parte Meg M. Jamison, individually and as next friend of
John W. Jamison III**

PETITION FOR WRIT OF MANDAMUS

**(In re: The Estate of John W. Jamison III, an alleged
incapacitated person)**

(Jefferson Probate Court, 18-BHM-02421)

BOLIN, Justice.

Meg M. Jamison ("Meg"), individually and as next friend of her husband, John W. Jamison III ("John"), seeks a writ of mandamus

1190984

directing the Jefferson Probate Court ("the probate court") to set aside its May 20, 2020, order automatically renewing temporary letters of guardianship and conservatorship regarding John.

Facts and Procedural History

In July 2018, Wilson Jamison ("Wilson") petitioned the probate court to have Meg, his mother, involuntarily committed. In support of his petition, filed pursuant to § 22-52-1 et seq., Ala. Code 1975, Wilson alleged that Meg had verbally and physically abused John and him. He also alleged that Meg had attempted to kill him, John, and herself. In September 2018, the probate court issued an "appearance order," stating:

"A sworn petition having been filed pursuant to § 22-52-1 et seq., Code of Alabama 1975, and the laws of the State of Alabama, alleging that the petitioner therein has reason to believe that the respondent is mentally ill and poses a real and present threat of substantial harm to self and/or others, and praying for respondent's commitment to the State Department of Mental Health, and the Court, having reviewed said petition, ... is of the opinion that the said respondent should be brought before this Court ... to determine what, if any, limitations or restrictions should be placed upon the said respondent pending examination and evaluation by a psychiatrist and/or other qualified persons concerning same."

However, after a hearing, the probate court dismissed Wilson's petition.

1190984

During this same period, the Jefferson County Department of Human Resources ("DHR") became involved with John after receiving reports in June 2018 and September 2018. The reports alleged that John suffered from dementia and was being physically, verbally, and emotionally abused by Meg. The reports also indicated that Meg was abusing her prescription medications and alcohol and had untreated mental-health issues. The reports further indicated that, because Meg was involved in an involuntary-commitment proceeding, no one would be at home to care for John.

After investigating the reports, DHR, on September 28, 2018, filed, pursuant to the Adult Protective Services Act ("the APSA"), § 38-9-1 et seq., Ala. Code 1975, a petition ("the adult-protective-services petition") in the Jefferson Circuit Court ("the circuit court"), alleging that John was an "adult in need of protective services."¹ See § 38-9-2(4), Ala. Code 1975

¹Section 38-9-2(2), Ala. Code 1975, defines an "adult in need of protective services" as:

"A person 18 years of age or older whose behavior indicates that he or she is mentally incapable of adequately caring for himself or herself and his or her interests without serious

1190984

(defining "court," as used in the APSA, as "[t]he circuit court"). On October 1, 2018, the circuit court entered an emergency order requiring that John have a complete physical and mental evaluation at Grandview Hospital. The circuit court also set a hearing for October 11, 2018. Meg filed a motion to intervene, which the circuit court granted. Following the hearing, the circuit court entered an order finding that John was in need of continuing care and supervision and should remain at Grandview Hospital. The circuit court set a final hearing for November 9, 2018.

On October 12, 2018, DHR filed, pursuant to the Alabama Uniform Guardianship and Protective Proceedings Act ("the AUGPPA"), § 26-2A-1 et seq., Ala. Code 1975, petitions seeking temporary and permanent letters of guardianship and conservatorship regarding John ("the guardianship/conservatorship petitions") in the probate court. See § 26-

consequences to himself or herself or others, or who, because of physical or mental impairment, is unable to protect himself or herself from abuse, neglect, exploitation, sexual abuse, or emotional abuse by others, and who has no guardian, relative, or other appropriate person able, willing, and available to assume the kind and degree of protection and supervision required under the circumstances."

1190984

2A-20(3), Ala. Code 1975 (defining "court," as used in the AUGPPA, as "[a] probate court of this State"). The guardianship/conservatorship petitions alleged, in pertinent part, as follows:

"(2) John Jamison is an incapacitated person in that he is has a diagnosis of dementia. Mr. Jamison is alleged to be receiving improper care in the home, and is prone to wandering, driving while intoxicated and having memory issues. There are additional concerns that he could be subjected to physical, verbal and emotional abuse in the home.

...

"(3) John Jamison is a person in need of protection, whose diagnosis and behaviors render him unable to manage his property and business affairs, whose property will be wasted or dissipated unless proper management is provided, and for whom funds are continually needed for healthcare, support and maintenance, and for whom protection is necessary and desirable to obtain or to provide such funds.

"(4) John Jamison is a person in need of a guardian of his person in that he is unable to provide for his basic needs of shelter, food, clothing, and healthcare. His behaviors and diagnosis indicate that he is mentally and/or physically incapable of adequately caring for himself and his interests without serious consequences to himself or others; and due to his physical and/or mental impairments, he is unable to protect himself from abuse, neglect or exploitation by others.

"(5) DHR became involved with John Jamison after receiving reports from the community that Mr. Jamison suffers from dementia and ... is being physically, verbally and emotionally abused by his wife. In addition, it was reported

1190984

that Mr. Jamison's wife/caregiver abuses her prescription medication and has untreated mental health diagnoses. Concerns were noted as it relates to Mr. Jamison's well-being and safety in the home with his wife.

"(6) Mr. Jamison's wife had a mental health commitment petition filed concerning her welfare as to the above reports concerning her own behaviors; however the petition was dismissed by the Probate Court of Jefferson County. Mrs. Jamison is back at the couple's home. Due to the history of domestic disturbances in the home, DHR and Mountain Brook Police Department are very concerned for Mr. Jamison's health and well-being."

While the guardianship/conservatorship action was pending in the probate court, the circuit court apparently continued the final hearing set for November 9, 2018, in the adult-protective-services action. However, on November 28, 2018, DHR filed an emergency motion requesting that the circuit court require Meg to sign papers admitting John to an assisted-living facility because John had attempted to leave Grandview Hospital. Rather than asking that John be placed in the geriatric psychiatric unit at Grandview Hospital, DHR asked that John be placed in the "memory unit" of the assisted-living facility. Meg objected and requested that 24-hour care be provided to John at their home. On December 19, 2018, the parties agreed that John should be transferred to the assisted-living

1190984

facility, and the circuit court reset the adult-protective-services action for a final hearing on January 10, 2019.

Also on December 19, 2018, the probate court entered an order appointing attorney Gregory Hawley as John's temporary guardian and conservator with the powers set out in § 26-2A-78 and § 26-2A-152, Ala. Code 1975. The probate court revoked all powers of attorney previously executed by John. The probate court's order provided that Hawley should file an inventory of John's assets within 90 days and that the "temporary letters of guardianship and conservatorship are automatically renewed every thirty (30) days without action by this court." The probate court also set the guardianship/conservatorship action for a final hearing on March 20, 2019.

On February 3, 2019, DHR filed, with the consent of the other parties, a motion to dismiss the adult-protective-services action because the probate court had appointed a temporary guardian and conservator for John. On February 5, 2019, the circuit court entered an order dismissing the adult-protective-services action. On February 6, 2019, the probate court entered an order authorizing Hawley, as John's temporary

1190984

conservator, to pursue an action on behalf of John and against a trust to obtain sufficient income to pay for John's care and living expenses.

On March 13, 2019, Meg filed a motion to remove the guardianship/conservatorship action to the circuit court, pursuant to § 26-2-2 and § 26-2-3, Ala. Code 1975. DHR filed an objection to Meg's motion to remove the action to the circuit court. Hawley moved to intervene regarding the motion to remove, which the circuit court granted. Hawley then filed a motion to stay the removal, which the circuit court also granted.²

On March 26, 2019, Hawley filed with the probate court an inventory of John's assets indicating that John had no assets.³ On April

²Section 26-2-2 provides for the removal of the "administration or conduct of any guardianship or conservatorship" of an incapacitated person. (Emphasis added.) "The filing of a petition that raises the possibility of the necessity for the appointment of a guardian or conservator, however, is not the equivalent of creating a guardianship or conservatorship that must be 'administ[ered] or conduct[ed].'" Ex parte Casey, 88 So. 3d 822, 829 n.7 (Ala. 2012). On March 30, 2020, the circuit court entered an order dismissing Meg's motion to remove "without prejudice until such time as the jurisdictional issues currently pending in probate court of Jefferson County are resolved."

³Apparently, the final hearing scheduled for March 20, 2019, had been rescheduled.

1190984

23, 2019, the probate court held a hearing on the petition for permanent letters of guardianship and conservatorship for John. However, the hearing had to be continued because of the number of witnesses expected to testify, and it was rescheduled for July 15, 2019. The probate court therefore entered an order stating that the temporary letters of guardianship and conservatorship "are automatically renewed every 14 days without action by this court." In that order, the probate court also directed Meg to provide the court with an accounting covering John's and Meg's assets for the preceding five years.

An issue arose regarding payment for John's care in the assisted-living facility, and on May 16, 2019, Hawley filed a motion for instructions, asking the probate court how to proceed because the assisted-living facility had issued a 30-day notice of John's discharge for lack of payment. On May 17, 2019, Meg filed the requested accounting. On July 11, 2019, Hawley filed a motion to require Meg to supplement and/or amend her accounting before the final hearing.

On July 15, 2019, DHR filed a motion to disqualify Meg's attorneys because, it alleged, the attorneys had represented John in the past and

1190984

had intimate knowledge of his business affairs. DHR argued that the attorneys were using privileged information against John to avoid payment for John's care. Based on the motion, it is unclear whether Meg's attorneys were continuing to represent John in any capacity at the time the motion was filed. That same day, the probate court entered an order requiring Meg's attorneys to ask the Alabama State Bar whether their representation of Meg created a conflict of interest. The probate court continued the case and set it for a final hearing on November 19 through 21, 2019. Meg subsequently petitioned this Court for a writ of mandamus, challenging several of the probate court's rulings in the guardianship/conservatorship actions, and this Court denied that petition, by order, on August 14, 2019. Ex parte Jamison (No. 1180709).

On October 9, 2019, the State Bar answered the question regarding whether there was a conflict precluding the attorneys from representing Meg in the guardianship/conservatorship action. The State Bar, while acknowledging that the relevant facts were unclear regarding whether the attorneys were currently representing John in any way, opined that if any confidential information that was generally not known to the public

1190984

had been obtained by the attorneys during their representation of John and could be used to John's disadvantage during their representation of Meg, then a conflict of interest existed.⁴ On October 26, 2019, DHR filed a renewed motion to disqualify the attorneys from representing Meg in the guardianship/conservatorship action.

Following a hearing, the probate court entered an order on November 12, 2019, disqualifying the attorneys from representing Meg based on the following reasoning: (1) John was a person in need of protection, (2) John might need protection from Meg, (3) Meg's and John's interests were not aligned and could be in conflict, (4) the attorneys were disqualified from representing either Meg or John under Rule 1.7, Ala. R. Prof. Cond., and (5) the attorneys were disqualified from representing either Meg or John under Rule 1.9, Ala. R. Prof. Cond.

On November 19, 2019, the probate court held a hearing on the guardianship/conservatorship petitions. Neither Meg nor any counsel representing Meg appeared at the hearing. On January 23, 2020, the

⁴The State Bar acknowledged that the opinion was nonbinding and applied to future conduct only.

1190984

probate court entered a judgment purporting to grant permanent letters of guardianship and conservatorship for John. On February 7, 2020, Meg filed a motion to alter, amend, or vacate that judgment. In the motion, Meg argued, among other things, that the probate court had lacked the authority to enter that judgment because, she asserted, DHR had failed to notify John of the November 19, 2019, hearing in accordance with § 26-2A-103, Ala. Code 1975. The probate court set the motion for a hearing on April 28, 2020. On February 14, 2020, Meg filed a corrected motion to alter, amend, or vacate, requesting a stay of any prior orders, including the probate court's initial emergency order ruling that John was in need of protection. That same day, Meg filed a motion to remove Hawley as John's guardian and conservator, to appoint Meg as John's permanent guardian, and to enter a "summary judgment" in favor of Meg on all issues. On March 3, 2020, DHR filed a response to Meg's motions, acknowledging that John had not been served with notice of the November 19, 2019, hearing and that the probate court should vacate its January 23, 2020, judgment and order a new trial. DHR also objected to staying the probate court's emergency order ruling that John was in need of

1190984

protection. Additionally, on March 3, 2020, DHR filed a motion to amend the guardianship/conservatorship petitions to "more accurately reflect the circumstances leading to the need for appointment of a permanent guardian and conservator," including John's more recent diagnoses that, it asserted, render him unable to provide for his basic needs or to manage his property. On March 18, 2020, DHR filed an emergency motion to continue the temporary guardianship and conservatorship of John "until the next scheduled court date of April 28, 2020 with or without automatic renewal every thirty days until a final resolution of the permanent petition can be had." On April 3, 2020, the probate court entered an order continuing Hawley's appointment as John's temporary guardian and conservator for 30 days, with the appointment and letters of temporary guardianship and conservatorship automatically renewing every 30 days thereafter without further action by the parties until a final judgment could be entered.⁵ Notwithstanding the automatic-renewal provision of the April 3, 2020, order, on May 1, 2020, DHR filed another motion to

⁵The hearing set for April 28, 2020, did not take place. It is unclear from the materials before us why that hearing was not held.

1190984

continue the temporary guardianship and conservatorship of John because, it noted, "the current temporary letters are set to expire on May 3, 2020." That same day, DHR filed a motion seeking to revoke "all alleged authority that any party may assert to remove [John] from his current placement." On May 4, 2020, the probate court entered an order preventing any party from removing John from the assisted-living facility.

Following a hearing on May 13, 2020, the probate court entered an order on May 20, 2020, revoking its January 23, 2020, judgment granting permanent guardianship and conservatorship of John because John had not been given notice of the November 19, 2019, hearing. Specifically, the probate court stated that Meg's "motion and corrected motion to alter, amend or vacate/motion to stay pending hearing on motions is granted by agreement of all parties but limited only in that the permanent petition will be reset for hearing, due to service not being perfected on the ward in the 11/[19]/19 hearing." The probate court renewed its order granting temporary letters of guardianship and conservatorship of John. The probate court again ordered that the temporary letters would automatically renew every 30 days without further order from the probate

1190984

court until a permanent order is entered. The probate court set a final hearing on the permanent guardianship/conservatorship petitions to begin on August 18, 2020.⁶ On July 31, 2020, Hawley consented to placing John in hospice care at the assisted-living facility. On August 26, 2020, DHR filed a motion to extend Hawley's temporary letters of guardianship and conservatorship. On August 31, 2020, Meg filed this petition for a writ of mandamus.⁷

Standard of Review

" ' "A writ of mandamus is an extraordinary remedy, and it 'will be issued only when there is: 1) a clear legal right in the petitioner to the order sought; 2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; 3) the lack of another adequate remedy; and 4) properly invoked jurisdiction of the court.' " "

"Ex parte Monsanto Co., 862 So. 2d 595, 604 (Ala. 2003) (quoting Ex parte Butts, 775 So. 2d 173, 176 (Ala. 2000),

⁶The final hearing set for August 18, 2020, was postponed in compliance with administrative orders issued by this Court in response to the COVID-19 pandemic.

⁷The probate court's May 20, 2020, order renewed automatically every 30 days, thus making Meg's mandamus petition challenging that order timely pursuant to 42-day filing requirement of Rule 21, Ala. R. App. P.

1190984

quoting in turn Ex parte United Serv. Stations, Inc., 628 So. 2d 501, 503 (Ala. 1993))."

Ex parte Jim Walter Res., Inc., 91 So. 3d 50, 52-53 (Ala. 2012). The question of subject-matter jurisdiction is reviewable by a petition for a writ of mandamus. Ex parte Flint Constr. Co., 775 So. 2d 805 (Ala. 2000). "Mandamus will lie to direct a trial court to vacate a void judgment or order. Ex parte Chamblee, 899 So. 2d 244, 249 (Ala. 2004)." Ex parte Sealy, L.L.C., 904 So. 2d 1230, 1232 (Ala. 2004).

Discussion

I.

Meg argues that the probate court lacked jurisdiction over the guardianship/conservatorship action while the adult-protective services action was pending in the circuit court. Specifically, Meg argues that, after DHR filed the adult-protective-services petition in the circuit court pursuant to § 38-9-6, DHR could not seek temporary letters of guardianship in the probate court under § 26-2A-107, Ala. Code 1975. We disagree. The APSA and the AUGPPA are not mutually exclusive and, thus, the filing of the adult-protective-services petition in the circuit court

1190984

did not prohibit the subsequent filing of the guardianship/conservatorship petitions in the probate court. Although the APSA and the AUGPPA serve somewhat different purposes, they coexist. Indeed, the APSA acknowledges the applicability of the AUGPPA when the appointment of a guardian and conservator for an adult in need of protective services might be necessary.

The APSA was written with DHR in mind. Specifically, DHR arranges services and provides case-management services for adults in need of protective services. Section 39-9-8, Ala. Code 1975, provides that DHR shall investigate reports of alleged physical abuse, neglect, exploitation, sexual abuse, and emotional abuse of elderly or disabled adults. DHR may petition for the provision of emergency protective services and protective placement of adults who, because of their physical or mental disabilities, are unable to provide for their own basic needs and whose health or safety are in immediate danger. § 38-9-5, Ala. Code 1975.

A determination that an adult is in need of protective services does not necessarily require a finding of incapacity; rather, § 38-9-2(2) provides that an adult in need of protective services is someone

1190984

"whose behavior indicates that he or she is mentally incapable of adequately caring for himself or herself and his or her interests without serious consequences to himself or herself or others, or who, because of physical or mental impairment, is unable to protect himself or herself from abuse, neglect, exploitation, sexual abuse, or emotional abuse by others, and who has no guardian, relative, or other appropriate person able, willing, and available to assume the kind and degree of protection and supervision required under the circumstances."

(Emphasis added.)

Under § 38-9-6(g), a guardian or conservator may be appointed for a person in need of protective services, but is not required. Specifically, § 38-9-6(g) provides:

"If it is agreeable with the person to be served, the court may appoint a guardian, or conservator, or both, having the same powers, duties, and obligations, including having a bond, as a guardian of an incapacitated person or a conservator under the Alabama Uniform Guardianship and Protective Proceedings Act and it shall not be necessary to have a hearing on that issue; otherwise, the court may appoint a guardian, a conservator, or both, following the procedures provided by the Alabama Uniform Guardianship and Protective Proceedings Act."

Clearly, the AUGPPA may aid and augment the services and protections provided an adult in need of protective services under the APSA.⁸

⁸Section 26-2A-31, Ala. Code 1975, a part of the AUGPPA, provides, in part:

"(a) To the full extent permitted by the constitution and as permitted under Article 2 of Chapter 2B of this title [i.e., Article 2 of the Alabama Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, § 26-2B-101 et seq., Ala. Code 1975], the court has jurisdiction over all subject matter relating to estates of protected persons and protection of minors and incapacitated persons.

"(b) The court has full power to make order, judgments, and decrees and take all other action necessary and proper to administer justice in the matters that come before it.

"(c) The court has jurisdiction over protective proceedings and guardianship proceedings."

The Comment to § 26-2A-31 provides, in part:

"This section shall not be construed to alter or affect the jurisdiction of the circuit court under the Adult Protective Services Act, Ala. Code (1975) Sections 38-9-1 through 38-9-11, which continues in effect and will apply for petitions pertaining to adults in need of protective services. See Comment to Section 26-2A-102[, Ala. Code 1975,] as to the jurisdiction of circuit courts under the Adult Protective Services Act of 1976. Ala. Code Sections 38-9-1 through 38-9-11 (1975, as amended by Acts 1977, No. 780)."

The AUGPPA applies to incapacitated persons. See § 26-2A-20(8),

We also note that the Comment to § 26-2A-102, Ala. Code 1975, provides, in part:

"This chapter [i.e., the AUGPPA] does not expressly repeal, nor is it intended to repeal by implication, the Adult Protective Services Act of 1976, Ala. Code Sections 38-9-1 through 38-9-11 (1975, as amended by Acts 1977, No. 780). The Adult Protective Services Act is principally an act to provide protective services (i.e., 'services whose objective is to protect an incapacitated person from himself and from others') and placement to prevent abuse, neglect, and exploitation of adults. The act authorizes the department of human [resources], in an emergency, and any 'interested person' (which presumably includes the department of human [resources]), to petition the circuit court for protective services or placement, when the adult is unable or unwilling to consent to services or placement. The Adult Protective Services Act provides [Ala. Code Section 38-9-6(g) (1975, as amended by Acts 1977, No. 780)] that the circuit court 'may' appoint a 'guardian,' but 'the department [of human resources] shall not be appointed as guardian.' In appointing the 'guardian,' the act refers to this chapter for the powers of the guardian and procedures in the appointment. Both that act and this chapter are consistent in that both acts provide for the use of a six-person jury to determine some facts and both acts permit the use of a court representative to evaluate the needs of the allegedly incapacitated person. In addition, both acts adopt the policy of placing the 'least possible restriction on personal liberty and exercise of constitutional rights consistent with due process and protection....' of the protected person. See particularly, Ala. Code Section 38-9-3 (1975, as amended by Acts 1977, No. 780) and, for example, Section 26-2A-105[, Ala. Code 1975,] of this chapter."

1190984

Ala. Code 1975. The appointment of a guardian is required for a person found to be an incapacitated person. See § 26-2A-102 and § 26-2A-105, Ala. Code 1975. Section 26-2A-130, Ala. Code 1975, sets out "a broad category of persons who, for a variety of reasons, may be unable to manage their own property" or may need a conservatorship or require a protective order. Comment to § 26-2A-130.

Meg cites § 26-2A-131(1), Ala. Code 1975, a part of the AUGPPA, for the proposition that, while the adult-protective-services petition filed by DHR was pending in the circuit court, the probate court lacked jurisdiction to rule in the guardianship/conservatorship action. Meg misreads that section of the AUGPPA. Section 26-2A-131 provides:

"Subject to Section 26-2A-31, [Ala. Code 1975,] after the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:

"(1) Exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated; and

"(2) Exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this state must be managed, expended, or distributed to or for the use of the

1190984

protected person, the protected person's dependents, or other claimants."

The "other protective order" referred to in § 26-2A-131 (a provision coming under Article 2, Division 3 of the AUGPPA, regarding "Protection of Property of Persons Under Disability and Minors," a division that concerns protective proceedings, not protective services) is not referring to protective orders that could be issued by a circuit court relating to protective orders that could be issued by a circuit court relating to an adult in need of protective services, but, rather, is referring to protective orders that could be issued by a probate court relating to the property of a "protected person," as that term is defined in § 26-2A-20(19). See § 26-2A-137(b), Ala. Code 1975 (providing that, under the AUGPPA, the probate court, "without appointing a conservator, may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected person's property and business affairs ... if the court determines that the transaction is in the best interest of the protected person"). The Comment to § 26-2A-131 further explains that prior Alabama law essentially granted "jurisdiction over conservatorship proceedings to the court from

1190984

which the appointment derive[d]." Section 26-2A-131 more clearly defines the extent of the jurisdiction of a court in which a conservatorship petition has been filed. "While the bulk of all judicial proceedings involving the conservator will be in the court supervising the conservatorship, third parties may bring suit against the conservator or the protected person on some matters in other courts. Claims against the conservator after appointment are dealt with by Section 26-2A-156[, Ala. Code 1975]." Comment to § 26-2A-131.

In the present case, DHR received reports that John was being abused. After investigating the allegations, DHR filed the adult-protective-services petition. DHR did not seek the appointment of a guardian or conservator under § 38-9-6(g). Instead, DHR sought the appointment of a guardian and conservator in the probate court, which it had the option to do, and once the probate court appointed a temporary guardian and conservator, the adult-protective-services action was no longer necessary.

II.

1190984

Next, Meg argues that the probate court erred in issuing temporary letters of guardianship and conservatorship that automatically renewed every 30 days, which, she asserts, gives the temporary guardian and conservator potentially never-ending continuing authority to act as John's guardian and conservator.

It is necessary to note that, although § 26-2A-107, Ala. Code 1975, expressly provides for a temporary guardianship for an incapacitated person, there is no corollary provision in the AUGPPA expressly providing for a temporary conservatorship for a person in need of a protective order. Instead, § 26-2A-130(a) provides that "the court may appoint a conservator or make any other protective order for cause as provided in this section," and § 26-2A-30(c) provides that such an appointment or protective order "may be made in relation to the estate and affairs of" a protected person who "is unable to manage his property and business affairs." Section 26-2A-136(b), Ala. Code 1975, provides, in pertinent part:

"(b) The court has the following powers that may be exercised directly or through a conservator in respect to the estate and business affairs of a protected person:

"(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice, the court may preserve and apply the property of the person to be protected as may be required for the support of the person or dependents of the person.

"....

"(3) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court, for the benefit of the person and members of the person's immediate family, has all the powers over the estate and business affairs which the person could exercise if present and not under disability, except the power to make a will. Subject to subsection (c), those powers include, but are not limited to, power to make gifts; to convey or release contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety; to exercise or release powers held by the protected person as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment; to enter into contracts; to create revocable or irrevocable trusts of property of the estate which may extend beyond the disability or life of the protected person; to exercise options of the protected person to purchase securities or other property; to exercise rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash

1190984

value; to exercise any right to an elective share in the state of the person's deceased spouse and to renounce or disclaim any interest by testate or intestate succession or by inter vivos transfer."

(Emphasis added.) Additionally, § 26-2A-137 provides that if it is established in a proper proceeding that a basis exists for the appointment of a conservator, the probate court, without appointing a conservator, may authorize protective arrangements for the needs of the protected person. Section 26-2A-137(c) provides that, before approving such protective arrangements, the probate court should consider the interests of creditors and dependents of the protected person, along with whether the protected person needs the continuing protection of a conservator. Section 26-2A-137(c) goes on to provide that the probate court "may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section...." (Emphasis added.) A special conservator, like all duly appointed conservators, serves a role akin to a trustee. See Comment to § 26-2A-2, Ala. Code 1975, (explaining the difference between a guardian and a conservator under the AUGPPA and noting "the feature in [the AUGPPA] of distinguishing between a

1190984

'guardian,' who is 'of the person' and like a parent in role, and a 'conservator,' who is 'of the property' and like a trustee in role").

Although the AUGPPA does not expressly authorize a "temporary conservatorship," the above-cited provisions of the AUGPPA do expressly allow for temporary orders to protect the property and business interests of a protected person and allow for the appointment of a "special" or temporary conservator.⁹ However, it is not the intent of the legislature

⁹The Comment to § 26-2A-1, Ala. Code 1975, provides, in pertinent part:

"This chapter [i.e., the AUGPPA] embodies separate systems of guardianship to protect persons of minors and persons otherwise incapacitated. An 'incapacitated person' is defined in this chapter to include not only persons who are non compos mentis and who have been covered by guardianship statutes historically, but in a broader sense it also includes persons 'who lack sufficient understanding or capacity to make or communicate responsible decisions concerning his person.' The broader definition permits legal protection, commensurate with the person's capacity, without the stigma sometimes attached to a judicial decision of non compos mentis. ...

"This chapter also offers a system of protective proceedings principally based on conservatorships to provide for the management of substantial aggregations of property of persons who are, for one reason or another including minority and incapacity, unable to manage their property. In short, this

1190984

to allow a temporary conservatorship, or actions taken to temporarily protect the assets of a protected person, to essentially ripen into a permanent conservatorship without further timely action and oversight of the probate court.

Section 26-2A-107, allowing for the appointment of a temporary guardian, limits the appointment to 30 days. Section 26-2A-107(a) provides:

"(a) If an incapacitated person has no guardian, an emergency exists, and no other person appears to have authority to act in the circumstances, on appropriate petition the court, without notice, may appoint a temporary guardian whose authority may not extend beyond 30 days and who may exercise those powers granted in the order."

The Comment to § 26-2A-107 provides, in part:

"Subsection (a) requires an 'emergency' situation for its application. Various suggestions were discussed of permissible periods for appointment of 'temporary guardians' in 'emergencies.' Ultimately the [AUGPPA] provides a period of

chapter recognizes two fiduciary capacities -- i.e., a 'guardian' who is 'of the person' and analogous to the role of the parent, and a 'conservator' who is 'of the property' and more closely analogous to the role of a trustee."

1190984

15 days.^[10] Of course, it is recognized in providing for a short period of appointment that a court can renew the appointment for an additional period or additional periods according to the exigencies of the emergency."

(Emphasis added.)

As noted in that Comment, a time limit for the appointment of a temporary guardian is important because a temporary guardian may be appointed only in an emergency situation. That Comment also recognizes that a court can renew the appointment for an additional period or additional periods "according to the exigencies of the emergency."

(Emphasis added.)

It is well settled that,

"[w]hen a court construes a statute, "[w]ords used in [the] statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says." ' Ex parte Berryhill, 801 So. 2d 7, 10 (Ala. 2001) (quoting IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992))."

¹⁰Section 26-2A-107(a) was amended in 2015 to provide for 30 days, rather than 15.

1190984

Mid-Century Ins. Co. v. Watts, [Ms. 1180852, Sept. 18, 2020] ___ So. 3d ___, ___ (Ala. 2020).

Although this Court has not specifically addressed the issue whether an automatically renewing temporary guardianship violates § 26-2A-107(a), we do have guidance on this issue from a recent case. In Ex parte Bashinsky, [Ms. 1190193, July 2, 2020] ___ So. 3d ___ (Ala. 2020), Joann Bashinsky petitioned this Court for a writ of mandamus directing the Jefferson Probate Court to vacate its orders disqualifying her attorneys from representing her in the underlying proceedings and appointing a temporary guardian and conservator over her person and property. Bashinsky's former lawyer and her former executive assistant ("the petitioners") had filed an emergency petition in the probate court seeking the appointment of a temporary guardian and conservator for Bashinsky. The petitioners were concerned that Bashinsky had made financial decisions that they believed were problematic and asserted that they had "witnessed a decline in Ms. Bashinsky's faculties in their discussions with Ms. Bashinsky about financial matters." ___ So. 3d at ___.

1190984

The probate court appointed a guardian ad litem for Bashinsky and a court representative, and, after meeting with Bashinsky, both found and noted in their initial reports that they were unable to formulate a definitive opinion or recommendation regarding the need for a guardian and conservator. Their reports were later supplemented after discussions with the petitioners and a former business associate of Bashinsky, all of whom were fired by Bashinsky or others at her direction. The guardian ad litem's and the court representative's supplemented reports recommended that Bashinsky could benefit from a guardian and/or conservator, although both also recommended further testing.

Bashinsky was initially represented by counsel of her choice, but the petitioners moved to disqualify her counsel based on a conflict of interest. On October 17, 2019, the probate court held a hearing on the emergency petition. At that hearing, the probate court disqualified Bashinsky's attorneys, without giving her the opportunity to waive any alleged conflict or to obtain new counsel, and, after the hearing, the probate court entered an order appointing a temporary guardian and conservator and issuing letters of temporary guardianship and conservatorship that automatically

1190984

renewed every 15 days, all while Bashinsky remained unrepresented by any counsel.¹¹

In her mandamus petition, Bashinsky raised two primary issues: (1) the probate court's alleged lack of personal jurisdiction over Bashinsky based on the failure to properly serve her with the emergency petition and (2) an alleged fundamental lack of due process as a result of the disqualification of Bashinsky's counsel. Bashinsky also argued that the probate court lacked subject-matter jurisdiction because, she said, the petitioners lacked "standing" to file the emergency petition.

¹¹Section 26-2A-102(b), Ala. Code 1975, provides that, after the filing of a petition for a guardian, the court shall set a date for a hearing and that, unless the allegedly incapacitated person is represented by counsel, counsel shall be appointed. Section 26-2A-102(c) provides:

"(c) A person alleged to be incapacitated is entitled to be present at the hearing in person. The person is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician or other qualified person and any court representative, and upon demand to trial by jury as provided in Section 26-2A-35[, Ala. Code 1975]. The issue may be determined at a closed hearing if the person alleged to be incapacitated or counsel for the person so requests."

1190984

With regard to the first issue, this Court noted that § 26-2A-107(a) provides that a temporary guardian may be appointed "without notice." However, as Bashinsky noted, § 26-2A-107 provides for such an appointment only when an emergency exists. This Court then addressed whether an actual emergency had existed so as to allow for the appointment of a temporary guardian and/or conservator for Bashinsky, recognizing that an emergency has been defined in the Alabama Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, § 26-2B-101 et seq., Ala. Code 1975, as "'[a] circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare'" ___ So. 3d at ___ (quoting § 26-2B-201(a)(1), Ala. Code 1975). Finding that the petitioners in the underlying proceedings had not alleged or demonstrated such an emergency, this Court found that the order appointing a temporary guardian and conservator was a nullity. In support of our holding that there was no emergency situation, this Court noted:

"Any lingering doubt that the situation was not a true emergency is erased by the probate court's scheduling of the subsequent hearing on the permanent petition. As was recounted in the rendition of the facts, the hearing on the emergency petition was held on October 17, 2019. After the

probate court rendered its judgment appointing a temporary guardian and conservator, the probate court scheduled a hearing on the permanent petition for March 12, 2020, five months after the emergency hearing. In a dependency context, removing a child from the custody of a parent without giving that parent notice and an opportunity to be heard requires that a full hearing be scheduled within 72 hours of such a determination. See § 12-15-308(a), Ala. Code. 1975. Temporary restraining orders are subject to a 10-day limitation period. See Rule 65(b), Ala. R. Civ. P. Section 26-2A-107(a) itself limits the appointment of a temporary guardian to 30 days, a provision Judge King attempts to ignore by ordering that the temporary guardian's appointment 'shall automatically renew every fifteen (15) days until the Permanent Hearing in this matter.' The short duration of such orders underscores that emergency rulings are permitted based on the understanding that the truncation of constitutional due-process rights they entail will be mitigated in short order. The probate court's decision at the October 17, 2019, hearing not to grant a continuance to allow Ms. Bashinsky to retain new counsel is unfathomable, given the length of the scheduled delay between the hearings on the emergency petition and on the permanent petition. More broadly, the fact that the probate court believed that the matter could wait another five months for a permanent determination starkly illustrates that any potential harm to Ms. Bashinsky's health, safety, or welfare was not immediate or substantial, i.e., this was not an 'emergency' by any reasonable definition."

Ex parte Bashinsky, ___ So. 3d at ___.

Although the Bashinsky Court determined that the situation in that case did not present an "emergency" under § 26-2A-107(a), the Court

1190984

noted that setting a time limit on the duration of a temporary guardianship "underscores that emergency rulings are permitted based on the understanding that the truncation of constitutional due-process rights they entail will be mitigated in short order." ___ So. 3d at ___. It is also clear that a temporary guardianship may be extended based upon "the exigencies of the emergency." § 26-2A-107(a). However, an automatically renewing order not only violates the plain meaning of § 26-2A-107(a), it defeats the purpose of the 30-day limit on a temporary guardianship. Although there is no express time limit regarding a temporary conservatorship, the same reasoning logically applies to an automatically renewing temporary conservatorship.

We recognize that the COVID-19 pandemic has impacted trials in all courts, including the probate court, and we appreciate the constraints the pandemic has placed on all courts to process cases in a timely manner. This does not, however, excuse the probate court from acting in accordance with the strictures of § 26-2A-107(a). Moreover, the probate court issued automatically renewing temporary-guardianship and

1190984

temporary-conservatorship orders even before the pandemic. Accordingly, the probate court's May 20, 2020, order violated § 26-2A-107(a).

III.

Last, Meg argues that an appointed, temporary guardian does not have absolute authority to consent to, and to authorize, his or her ward's being placed in hospice care. Further, Meg asserts that there is no evidence indicating that John voluntarily made a choice to be placed in hospice care because hospice is not medical care or treatment, but the withholding of treatment. Meg further argues that if there had been a valid order granting temporary letters of guardianship and conservatorship, the temporary guardian would have been required to obtain court approval under § 22-8A-11, Ala. Code 1975, a part of the Natural Death Act, § 22-8A-1 et seq., Ala. Code 1975, in order to place John in hospice care, which, Meg asserts, is equivalent to withholding medical treatment.

Because we have determined that the automatic-renewal portion of the probate court's May 20, 2020, order is void, the probate court must determine whether an emergency still exists necessitating a temporary

1190984

guardian for John. Suffice it to say, a temporary guardian may be granted broad powers regarding health-care decisions. See Ala. Code 1975, § 26-2A-107, § 26-2A-108(a), and § 26-2A-78(c)(4). Furthermore, Meg's reliance on the Natural Death Act is misplaced. The Natural Death Act was enacted to give competent adults (or their surrogates, pursuant to § 22-8A-11) the right to have medical procedures, life-sustaining treatment, or artificially provided nutrition and hydration withheld or withdrawn. The Natural Death Act does not appear to apply in this case. The hospice care recommended by John's physician is intended to manage John's "pain and comfort" due to John's "high risk of death within the next six months due to severe dementia/progressive, degenerative brain disease."

Conclusion

Based on the foregoing, we grant the petition and direct the probate court to set aside its May 20, 2020, order purporting to automatically renew the 30-day appointment of a temporary guardian and conservator for John.

PETITION GRANTED; WRIT ISSUED.

Shaw, Wise, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur.

1190984

Bryan, J., concurs in the result.

Parker, C.J., dissents.